

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 14 July 2004

Division: Growth Management

Bulk Item: Yes X No

Department: Marine Resources

AGENDA ITEM WORDING:

Approval of an amendment to a Contract (JPA) between the County and the Florida Department of Transportation (FDOT) for the completion of boat ramp engineering and reconstruction.

ITEM BACKGROUND:

The BOCC approved a Joint Participation Agreement in July of 2003 with FDOT to complete engineering and maintenance on five FDOT boat ramps along U.S. Highway 1. This amendment provides an additional year's funding commitment in the FDOT budget. There are no additional financial commitments required on the County's behalf.

PREVIOUS RELEVANT BOCC ACTION:

July 2003 – BOCC approved JPA with FDOT

CONTRACT/AGREEMENT CHANGES:

Amendment provides additional year's funding from FDOT.

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: Est. \$1,470,000

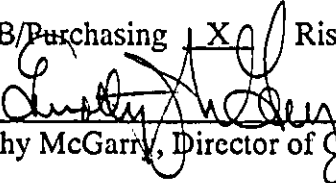
BUDGETED: Yes X No

COST TO COUNTY: Est. \$110,000

SOURCE OF FUNDS: BIF Fund 157

REVENUE PRODUCING: Yes No X AMOUNT Per Month Year

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL: 
Timothy McGarry, Director of Growth Management

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM NO.: K-3

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: FDOT Contract # _____
 Effective Date: Immediate
 Expiration Date: NA

Contract Purpose/Description:
 Contract Amendment with FDOT to complete Boat Ramp repairs at five ramp locations on U.S. 1

Contract Manager: George Garrett 2507 Marine Resources / 11
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 07/14/04 Agenda Deadline: 06/30/04

CONTRACT COSTS

Total Dollar Value of Contract: \$ 1,470,000 Current Year Portion: \$ 50,000

Budgeted? Yes ☐ No ☒

Account Codes: 125 02503 530470-900301-

Grant: \$ 1,360,000 est

County Match: \$ 110,000 est

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ NA/yr
 (Not included in dollar value above)

For: NA
 (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Reviewer	Date Out
Division Director			<u>[Signature]</u>	<u>7/8/04</u>
Risk Management			<u>Sheila A. Barker</u>	
O.M.B./Purchasing	<u>06/28/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>6/29/04</u>
County Attorney	<u>7/2/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>7/6/04</u>

Comments: _____

JOINT PARTICIPATION AGREEMENT

Amendment No. 1

THIS CONTRACT as entered into on the 15th day of July, 2003, between MONROE COUNTY (hereinafter referred to as the COUNTY) and the FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the DEPARTMENT) is hereby amended as follows:

- In accordance with Paragraph 10, **Amendment of Agreement**, the parties mutually agree to amend the Joint Participation Agreement (JPA) to add the obligations for Fiscal Year 04/05;
- In accordance with Paragraph 5, **Funding of Construction**, the Department will encumber the funds for Fiscal Year 04/05 which funds the West Summerland Key boat ramp as set forth in Attachment A to the JPA;
- In accordance with Paragraph 4, **Funding of Permitting and Design Work**, the COUNTY agrees to undertake the Permitting and Design Work of the West Summerland Key boat ramp.

In all other respects, the Contract of which this is an Amendment, and attachments relative thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed the day and year last written below.

FLORIDA DEPARTMENT OF TRANSPORTATION

MONROE COUNTY

By: 

By: _____

Date: May 13, 2004

Date: _____

Approved as to form and legal sufficiency:

Approved as to form and legal sufficiency:

By: 

D. MICHAEL SCHLOSS, ESQ.

By: 

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

SUZANNE A. HUTTON

ASSISTANT COUNTY ATTORNEY

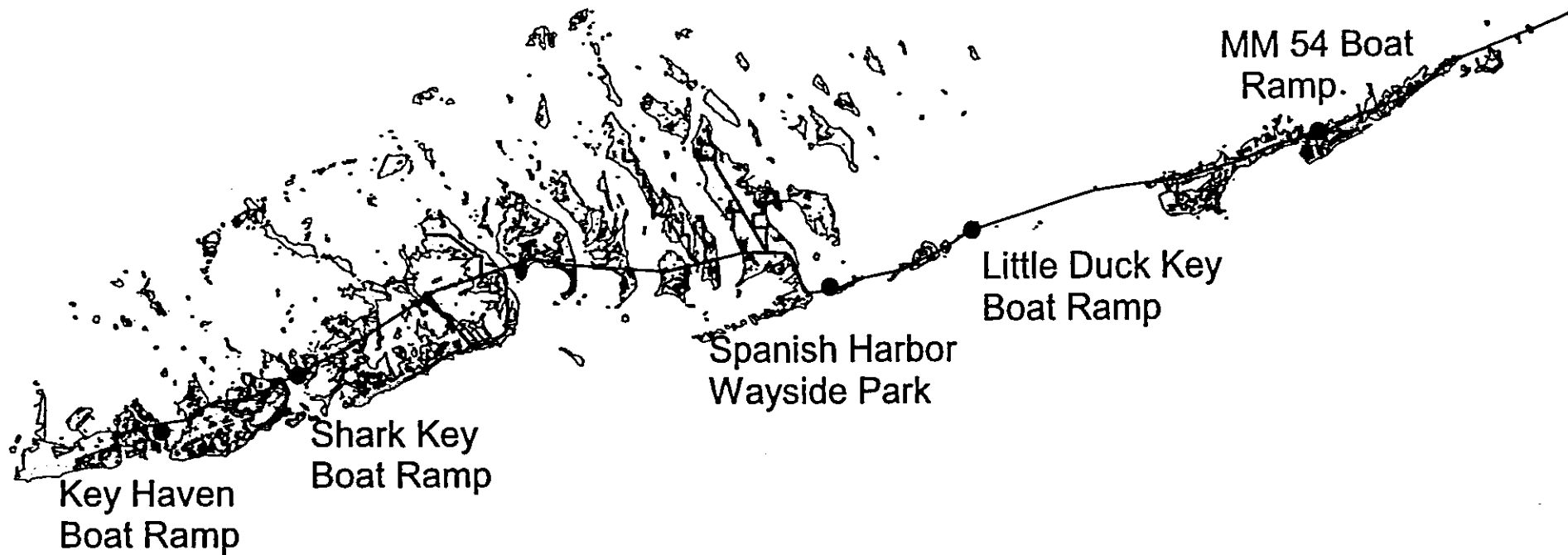
Date: 5/12/04

Date: 7/6/04

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DOT Boat Ramp Engineering & Construction Project

Location of Project Ramps



FILE COPY OF
APPROVED CONTRACT
FROM 7/15/03

Monroe County Clerk's Office Original

JOINT PARTICIPATION AGREEMENT

THIS JOINT PARTICIPATION AGREEMENT (this "Agreement") is made and entered into on this 15th day of JULY, 2003, between MONROE COUNTY, a political subdivision of the State of Florida, existing under the Laws of the State of Florida, herein after called the COUNTY, and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION a component agency of the State of Florida, hereinafter called the DEPARTMENT.

WITNESSETH

WHEREAS, the COUNTY expects to undertake the permitting, design, and construction of several boat ramps in the COUNTY over several years, and

WHEREAS, the DEPARTMENT desires to improve the boat ramps in MONROE COUNTY which are within DEPARTMENT rights-of-way as shown on Attachment A, and

WHEREAS, the DEPARTMENT and the COUNTY desire to pool resources in order to gain efficiencies and economies and in order to pursue certain grants for such work, and

WHEREAS, the DEPARTMENT agrees to participate in the costs of work performed on the State Roadways, and

WHEREAS, the parties hereto mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party;

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and benefits set forth and other good and valuable consideration, receipt of which is hereby acknowledged, hereby agree as follows:

1. **Representations by the Department.** The DEPARTMENT makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The DEPARTMENT has been duly created and is validly existing as a public agency under the laws of the State. The DEPARTMENT has all necessary power to enter into the transactions contemplated by this Agreement and to carry out its

obligations hereunder. The obligations of the DEPARTMENT under this Agreement are valid and enforceable in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, moratorium, and other laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- (b) There is no litigation pending or, to the knowledge of the DEPARTMENT, threatened with respect to the future development of the ramps which are a part of this Agreement which will affect the performance by the DEPARTMENT of its obligations under this Agreement.
- (c) No default exists with respect to the obligations of the DEPARTMENT under this Agreement, and the execution and delivery of this Agreement by the DEPARTMENT do not constitute a violation of applicable law or regulations or a breach of a default under any other agreement to which the DEPARTMENT is a party or an event that, with the passage of time, would become a breach of or default under any such agreement.
- (d) All consents, waivers, approvals and other governmental actions required to be taken in order for the DEPARTMENT to enter into and fully comply with this Agreement have been received and obtained by the DEPARTMENT.

2. Representations by the County. The COUNTY makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The COUNTY has been duly created and is validly existing as a body politic and corporate, a public instrumentality and an agency of the State existing under the

Act. The COUNTY has all necessary power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper corporate action the COUNTY has been duly authorized to execute and deliver this Agreement. The obligations of the COUNTY under this Agreement are valid and enforceable in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, moratorium, and other laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- (b) No litigation is pending, or to the knowledge of the COUNTY, threatened with respect to the future development of the ramps which are a part of this Agreement which will affect the performance by the COUNTY of its obligations under this Agreement.
- (c) No default exists with respect to the obligations of the COUNTY under this Agreement, and the execution and delivery by the COUNTY of this Agreement do not constitute a violation of applicable law or regulations or a breach of or default under any other agreement to which the COUNTY is a party or an event that, with the passage of time, would become a breach of or default under any such agreement.
- (d) All consents, waivers, approvals and other governmental actions required to be taken in order for the COUNTY to enter into and fully comply with this Agreement have been received or obtained by the COUNTY.

3. **Recitals.** The Recitals to this Agreement are true and correct and are hereby incorporated herein by reference and made a part hereof.

4. **Funding of Permitting and Design Work.**

(a) The DEPARTMENT covenants and agrees to undertake the Permitting and Design Work of the Key Haven Boat Ramp at its sole cost and expense as set forth in this Agreement and in accordance with the time frames set forth herein. The Permitting and Design Work shall be performed in a manner that conforms to the requirements of the work programs and design standards of the DEPARTMENT and the COUNTY as in effect on the date of this Agreement.

(b) The COUNTY covenants and agrees to undertake the Permitting and Design Work of the following ramps on the DEPARTMENT rights-of-way.

1. Marathon, (Quay),
2. Little Duck Key,
3. West Summerland Key,
4. Shark Key;

at its sole cost and expense as set forth in this Agreement and in accordance with the time frames set forth therein. The Permitting and Design Work will be performed in a manner that conforms to the requirements of the work programs and design standards of the DEPARTMENT and the COUNTY as in effect on the date of this Agreement.

5. **Funding of Construction.**

(a) The COUNTY covenants and agrees to undertake the construction of the Boat Ramps which are a part of this Agreement as part of an overall, multi-year plan to

improve various Boat Ramps in Monroe County both on and off DEPARTMENT rights-of-way.

(b) The DEPARTMENT covenants and agrees to reimburse the COUNTY for the construction costs of various Boat Ramps on the DEPARTMENT rights-of-way as follows:

1. Half of total cost of construction for the Marathon (Quay) Boat Ramp estimated to be \$180,000;
2. The total cost of construction of the Little Duck Key Boat Ramp which is estimated to be \$150,000;
3. The total cost of construction of the West Summerland Key Boat Ramp which is estimated to be \$150,000;
4. The total cost of construction of the Shark Key Boat Ramp which is estimated to be \$100,000;
5. The total cost of construction of the Key Haven Boat Ramp which is estimated to be \$780,000.

(c) The DEPARTMENT will encumber the funds for Fiscal Year 03 / 04 in accordance with this agreement. Funding and encumbrances for future fiscal years will be established by amendments to this Agreement in accordance with the timetable in Attachment A.

(d) The DEPARTMENT will reimburse the COUNTY for its share of the work when invoiced by the COUNTY in accordance with the Standard Financial Provisions of this agreement.

- (e) The COUNTY covenants and agrees to schedule the construction of the Boat Ramps on the DEPARTMENT rights-of-way in accordance with the availability of funds set forth on Attachment A of this agreement and future Amendments to this Agreement. Upon completion of the work, the COUNTY will certify to the DEPARTMENT that all work was performed in accordance with applicable DEPARTMENT standards.

6. Standard Financial Provisions.

1. The Department agrees to pay the COUNTY for the herein described services at a compensation as detailed in this Agreement.
2. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the State Comptroller under Section 215.422(14), Florida Statutes, or by the Department's Comptroller under Section 334.044(29), Florida Statutes.
3. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
4. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
5. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Travel Form No. 300-000-01 and will be paid in accordance with Section 112.061, Florida Statutes.
6. Participants providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has (5)

five working days to inspect and approve the goods and services. The Department has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

7. If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Participant. Interest penalties of less than one (1) dollar will not be enforced unless the Participant requests payment. Invoices that have to be returned to a Participant because of Participant preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
8. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.
9. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the

Department upon request. Records of costs incurred includes the Participant's general accounting records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

10. In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated.

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds.

Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of

TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year."

11. The Department's obligation to pay is contingent upon an annual appropriation by the Florida Legislature.

7. **Effective Date of this Agreement.** This Agreement shall become effective on the date hereof.

8. **Provisions Separable.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

9. **Amendment of Agreement.** This agreement may be amended by mutual agreement of the DEPARTMENT and the COUNTY expressed in writing and executed and delivered by each.

10. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered (personally, by courier service such as Federal Express, or by other messenger) against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

(a) If to the County: Monroe County
1100 Simonton Street, Room 2-205
Key West, Florida 33040
Attention: County Administrator

(b) If to the Department: Florida Department of Transportation
1000 NW 111th Avenue, Room 6231
Miami, Florida 33172
Attention: District Secretary

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

11. Entire Agreement. This Agreement, including the Attachment to this Agreement, contain the sole and entire agreement between the parties with respect to such subject matter and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

12. Binding Effect. This Agreement shall be binding upon the parties and their respective representatives, successors and assigns.

13. Waiver. Waiver by either party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

14. Captions. The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

15. Absence of Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or person other than the parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

16. Other Documents. The parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement,

whether or not specifically provided for in this Agreement; provided that the parties further acknowledge that certain additional actions by the COUNTY may require approval by the Board of the COUNTY, and, to the extent such approval is required by applicable law, obtaining such approval shall be a condition to the obligations of the COUNTY under this Section.

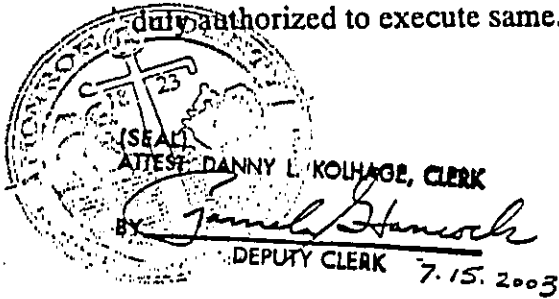
17. **Governing Law.** This Agreement and the interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall lie exclusively in Monroe, County, Florida.
18. **Indemnify and Hold Harmless.** The Contractor covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of services provided by the Contractor or any of its subcontractor(s) occasioned by the negligence, errors, or other wrongful act or omission of the Contractor or its sub Contractor(s), their employees, or agents. In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the Contractor's failure to purchase or maintain the required insurance, the Contractor shall indemnify the County from any and all increased expenses resulting from such delay. The first \$10.00 of remuneration paid to the Contractor is for the indemnification provided for above. The extent of liability is in no way limited to,

reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

[BALANCE OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement,
MONROE COUNTY, signing by and through its Chairman, and the STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION, signing by and through its District Secretary, each

duly authorized to execute same.



MONROE COUNTY

BY: [Signature]

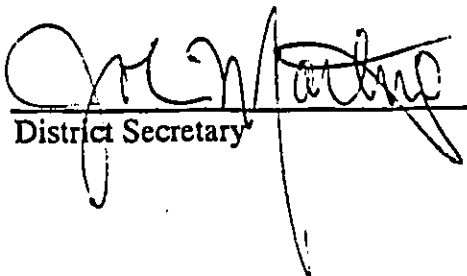
[SEAL]

ATTEST:

Approved as to form and legal
Sufficiency

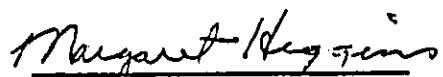
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY: [Signature]
ROBERT K. WOLFE
DATE 7-22-03

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION


BY: 
District Secretary

[SEAL]

ATTEST:


Margaret Higgins
Executive Secretary

Approved as to form and legal
Sufficiency


D. Michael Schloss
General Counsel

ATTACHMENT A

State Boat Ramps to be Improved Under this Agreement

Mile Marker	Island	Name/Location	Estimated Construction Cost	Expected Funds Available
53.9	Marathon (Quay)	MM 54 Public Boat Ramp	\$180,000	FY 03/04
40	Little Duck Key	Little Duck Key Public Park & Ramp	\$150,000	FY 05/06
34	West Summerland Key	Spanish Harbor Wayside Park	\$150,000	FY 04/05
11	Shark Key	Shark Key Boat Ramp	\$100,000	FY 05/06
6	Key Haven	Stock Island Boat Ramp	\$780,000	FY 03/04